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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 685

RAYMOND A. BELZ,

Petitioner,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, HARRY C. SCHAACK, RICHARD F. UHLMANN, J. O. McCLINTOCK, EARLE M. COMBS, JR., G. WILLARD HALES, SYLVESTER J. MEYERS, FRANK A. MILLER, THOMAS E. HOSTY, CARL E. BOSTROM, J. ELMER, JOHN S. MORRIS, GEORGE W. ALTORFER, ALBERT C. FISCHER, HOMER P. HARGRAVE, JOHN R. MURRAY and LEE H. WAGNER,

Respondents.

PETITION FOR REHEARING ON DENIAL OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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CHAMPLIN-SHEALY COMPANY, CHICAGO 368

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To the Honorable, Fred M. Vinson, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Raymond A. Belz, petitioner, by his attorneys, prays that this Court grant a Rehearing on the order of April 26, 1948, denying his petition for writ of certiorari to review

the judgment of the United States Circuit Court of Appeals for the Seventh Circuit.

In accordance with Rule 33 of this Court, petitioner represents as follows:

I.

Subsequent Intervening Circumstances.

1. Denial of certiorari in the instant case cannot be reconciled with the decisions or reasoning in the movie anti-trust opinions filed by this Court *subsequent* to April 26, 1948.

On May 3, 1948, this Court decided and filed opinions in three anti-trust movie cases: (1) *United States* v. *Griffith* (No. 64, Oct. Term 1947, 16 L. W. 4386); (2) *Schine Chain Theatres* v. *United States,* (No. 10, Oct. Term 1947, 16 L. W. 4402); and (3) *United States* v. *Paramount Pictures, etc.* (No. 79-86, inclusive, Oct. Term 1947) 16 L. W. 4389.

It is not a function of a petition for rehearing on denial of certiorari nor would it be proper under Rule 33 for petitioner to argue in detail the applicability of the three decisions or their reasoning to the facts in the instant case. But can it be reasonably doubted that the reasoning in these three cases as to what constitutes a violation of the anti-monopoly provisions of the Sherman Act squarely applies to the exercise by the Chicago Board of Trade of its monopoly characteristics in the instant case?

The "monopoly power" of the Chicago Board of Trade over dealings in grain futures contracts is not controverted. See our petition for certiorari at pages 26, 14 and 16.

Under Regulation 1899 the directors of the Chicago Board of Trade were exercising that monopoly power in

a manner *they* deemed economically desirable. *One* of the results of this exercise of monopoly power was to "prevent dealing in a substantial part of the grain futures contracts in interstate commerce, including petitioner's futures contract, all of which was in unreasonable restraint of interstate trade in commerce" (R. 5). It is suggested that this conduct was condemned by this Court as a violation of the Sherman Act in *United States* v. *Griffith*, when this Court said:

> "The anti-trust laws are as much violated by the prevention of competition as by its destruction. . . . It follows *a fortiori* that the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor, is unlawful." (16 L. W. at 4388.)

See also *United States* v. *Paramount*, 16 L. W. at 4399, and *Schine Theatre* v. *United States*, 16 L. W. at 4407.

The monopoly power of the Board was exercisable without restraint under Rule 251 which permitted the Board to make any Regulation concerning "settlement prices" as it deemed proper (R. 5).

The Chicago Board of Trade was exercising and using its monopoly power to foreclose competition—and this *per se* constituted a violation of the Sherman Act.

It is respectfully suggested that if the petition for certiorari in this case had been filed *subsequent* to the three opinions of May 3, 1948, this Court would not have denied certiorari. These Anti-Trust decisions reaffirm judicial recognition of the charter of economic liberty afforded the "small businessman" by the Sherman Act. The ruling of the Circuit Court of Appeals permits the Chicago Board of Trade to be exempted from this charter insofar as the small grain dealer is concerned.

2. The decision in *Anderson* v. *Atchison, Topeka & Santa Fe* (April 26, 1948 No. 620, Oct. Term, 1947, 16 L. W. 4375) concerning the requirements of pleading a cause of action cannot be reconciled with the decision denying certiorari.

Petitioner respectfully suggests that the allegations in the present complaint concerning conspiracy to fix, manipulate and control prices, and to prevent dealing in grain futures contracts (R. 4-5) is at least as detailed and specific as the complaint in the *Anderson* case, based upon the duty of the employer "to furnish a safe place to work."

II.

Substantial Ground Not Previously Presented.

1. Petitioner, suing as a private litigant under the Sherman Act, is, nevertheless, acting in the general public interest.

The petition for certiorari failed to suggest to the Court that, notwithstanding petitioner's status as a private litigant, he nevertheless was acting in the public interest.

The decisions construing the provisions of the Anti-Trust Laws providing for civil actions for damages by individuals (15 U. S. C. 15) recognize that the civil action for damages possesses *some* of the characteristics of a suit by the Government of the United States for violations of the Anti-Trust Laws.

Quemos Theatre Co. v. *Warner Bros.*, 35 F. Supp. 949, 950 (D. C., N. J., 1940).

Weinberg v. *Sinclair Refining*, 48 F. Supp. 203, 205 (D. C., N. Y., 1942).

Glenn Coal v. *Dickinson Fuel*, 72 F. 2d. 885, 889.

Maltz v. *Sax*, 134 F. 2d. 2, 4 (C. C. A. 7, 1934).
White Bear Corp. v. *State Theatre Corp.*, 129 F. 2d. 600, 604 (C. C. A. 6, 1942).

The anti-trust opinions of May 3, 1948 all involved actions by the United States Government. The petition for certiorari in the instant case should be considered in the light of this principle that the national importance of the civil action for damages is in part at least, the same as is an action by the Government of the United States for violation of the anti-trust laws. Furthermore Regulation 1899 (R. 6-7) was not passed under Government direction. And even if it had been that would not constitute a defense. (*U. S.* v. *Socony Vacuum Oil*, 310 U. S. 150 at 227 (1939).)

2. The reasons for denial of certiorari relied on by respondents do not justify denial of certiorari.

Denial of certiorari leaves counsel without knowledge as to the specific grounds therefor. Notwithstanding counsel's recognition of the heavy burden cast on this Court by petitions for rehearing in the discretionary jurisdiction, *i. e.* certiorari, cases, it is nevertheless the solemn obligation of a member of the Bar of this Court to express his views where he believes the Court has erred in a matter of national importance.

Petitioner respectfully suggests that respondents' brief either expressly or impliedly relied in great part on four separate grounds as basis for denial of certiorari. Petitioner further suggests that *these* four grounds did *not* grapple with the essential problems under the anti-trust laws or under the Commodity Exchange Act. In essence these four grounds *avoided* the precise questions presented by the petition for certiorari. These grounds in substance were that the rules of the Chicago Board of Trade should

be sustained, because: first, as a matter of business practicality; second, that if they were not sustained, a "parade of horrible consequences" resembling the effect of the "portal-to-portal" decision of this Court would necessarily follow; third, that "Cargill was gambling"; and, fourth, that the matter involving the Chicago Board of Trade was not of national importance. The fallacies and defects of these lines of reasoning is immediately evident, and needs only a statement to expose their weaknesses. These arguments strongly resemble similar arguments made—and rejected by this Court—in the movie anti-trust decisions of May 3, 1948.

Conclusion.

Petitioner respectfully suggests that if under the movie anti-trust cases a conspiracy by producers-distributors *aimed* at monopoly was illegal, then the actual monopoly power of the Chicago Board of Trade of the grain futures market and the exercise of such power by elimination of futures trading in grains and by fixing the prices of such futures contracts was even more clearly a violation of the Sherman Act. If the agreements by the eight national distributors in the movie industry served to violate the provisions of the Anti-Trust laws, then the buying, control and manipulation of prices by the Chicago Board of Trade—affecting 90% of all the grain futures contracts—was even more clearly illegal.

The denial of certiorari in the instant case means that the country grain dealer or trader no longer has any substantial protections when he makes a contract of hedging. The Chicago Board of Trade is now free to exercise supreme and unlimited monopoly power to determine and

affect the prices of grain futures contracts as its Board of Directors see fit to do.

Respectfully submitted,

RAYMOND A. BELZ,
Petitioner,

By Abraham W. Brussell
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HARVEY UHLENHOPP,
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CARL DEVOE,
ABRAHAM W. BRUSSELL,
Of Counsel.

Certificate.

Abraham W. Brussell, in accordance with Rule 33 of this Court, certifies that he is a member of the Bar of this Court; that he has caused to be prepared the foregoing petition for rehearing, and states that this petition for rehearing is presented in good faith and not for delay. He further certifies that this petition for rehearing, in his opinion, is confined to intervening circumstances of substantial or controlling effect and to a substantial ground available to petitioner although not previously presented in the petition for certiorari.

Abraham W. Brussell
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ABRAHAM W. BRUSSELL.